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Brief

Senate Research Center • Sam Houston Bldg. • Suite 575 • 201 E. 14th Street • Austin, TX 78701 • (512) 463-0087 • Fax: (512) 463-1271 • TDD: 800-735-2989

Nursing Home Liability Insurance Rates:

Factors Contributing to the Rate Increases in Texas

Nursing homes in Texas are facing unprecedented rate increases in their liability insurance premiums

The Texas population is aging as its median age climbed from 27.9 years in 1950 to 30.8 in 1990, with projections of reaching 33.0 in 2000. Estimates by the 2000 U.S. Census indicate that there were approximately 2.75 million Texans aged 60 and above. While California and Florida have the largest number of elderly, Texas is projected to have the third-highest elderly population by 2025. Population projections indicate that by 2010, Texans 60 and above will total 15 percent (3.6 million) of the state's total population, 19 percent (5.5 million) by 2020, and almost one-quarter (7.5 million) of the state's population by 2030 (see chart "Growth in Texas Population 60+" on page 2).[1]

Long-term care remains an important issue for an aging Texas population. In 1999, Medicaid enrollment among the elderly population in Texas was approximately 340,000, or approximately 20 percent of total Medicaid expenditures for all ages.[2] The population aged 75 and above, or those at highest risk of long-term care expenditures, is expected to increase from one million in 2000 to 2.4 million by 2030–a 160 percent increase.[3] As the elderly population increases we can expect an increase in the demand for Medicaid services.[4]

Concomitant with an aging population is the delivery of care provided by nursing homes. Currently, nursing homes in Texas are facing unprecedented rate increases in their liability insurance premiums. Nursing home liability insurance generally pays for the damages and defense expenses resulting from a negligent act, error, or omission in caring for a nursing home resident. Insurance companies vary in the amount of damages they cover for negligent actions committed by the insured. While nursing homes are not legally required to purchase liability insurance, most Texas nursing homes purchase liability insurance.

The Texas Department of Insurance (TDI) estimates that nursing homes' liability insurance premiums vary between state-regulated insurance companies and unregulated, or surplus-line, insurance companies. State-regulated insurance companies have increased their nursing home liability premiums from approximately $200 per licensed bed in 1998 to approximately $900 per licensed bed in the 2000 insurance market.[5] Regulated insurance companies are licensed to conduct business in the State of Texas. State-regulated insurance companies are subject to closer financial scrutiny and are required to be more forthcoming in making their records and premium amounts public. As a result, the state is able to monitor and track the activities of state-regulated insurance companies.

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Among surplus-line insurance companies, current premium estimates are approximately $2,500 per licensed bed increasing to $5,000 per licensed bed in some cases.[6] Surplus-line companies are not required to disclose as much financial information as regulated insurance companies, nor are they required to be as forthcoming in their insurance premiums. Also, surplus-line companies cannot advertise in the state and in order to insure a nursing home they must show proof that the home was unable to secure regulated insurance rates before writing an insurance policy. TDI believes the discrepancies between regulated insurance rates and surplus-line insurance rates are partially a result of the selective policy writing of regulated insurance companies that force riskier nursing homes into the surplus-line market.

Compounding the problem of nursing home liability insurance premiums is the decreasing number of insurance companies offering nursing home liability insurance. In Texas, the number of insurance carriers has decreased since 1996. In 1996, there were eight regulated companies conducting business in the state. That number dwindled to three by the beginning of 2000 and has now dropped to just two companies. Few non-admitted [surplus-line] carriers are willing to write the coverage for fear of huge litigation costs.[7] According to the Texas Health Care Association (THCA), an association representing for-profit nursing homes, many nursing homes are not purchasing liability insurance because they cannot afford the premium costs.

Legislative inquiries on the liability issue continue to focus on several factors, including:

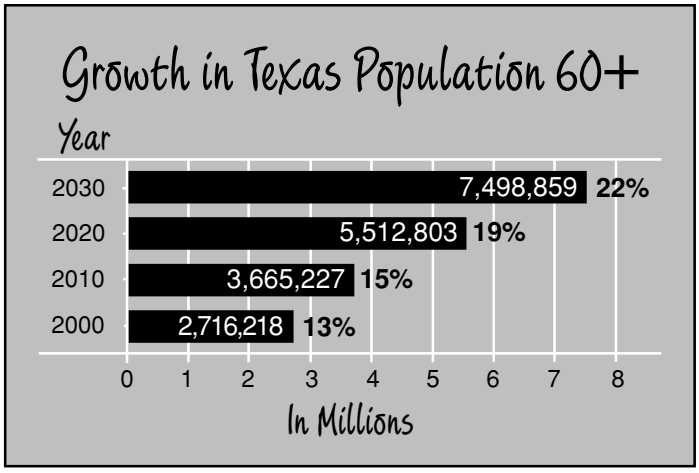
- **Nursing Home Survey Instruments:** Legislative discussion will focus on clarifying language in S.B. 190, passed during the 75th Legislature, on the introduction of nursing home surveys as evidence in civil lawsuits.
- **Medicaid Reimbursement Rates:** Texas Medicaid reimbursement rates for nursing homes are among the bottom twenty percent of all states in the country. Legislative discussion will focus on the level of Medicaid reimbursement rates necessary to address quality of resident care and nursing home liability premiums.
- **Punitive Damage Caps in Lawsuits Against Nursing Homes:** Lawsuits involving injuries to an elderly individual are exempt from Texas' punitive damage caps. Legislative discussion will focus on whether punitive damage caps in nursing home cases will have an effect on quality of care and nursing home liability premium rates.
- **Public Rating System of Nursing Homes:** Legislative discussion will focus on establishing a state program that rates the quality of care provided by nursing homes. TDI has a rating system for nonprofit nursing homes applying for a state insurance program and discussion will focus on extending this to all nursing homes operating in the state.

As this brief will clarify, there are competing arguments related to each of the potential causes associated with the nursing home liability insurance premium increases.

Nursing Home Survey Instruments

The Texas Association of Homes and Services for the Aging (TAHSA), an association representing nonprofit nursing homes, and THCA believe that nursing home liability premium increases are affected by allowing the introduction of Texas Department of Human Services (DHS) nursing home surveys as evidence in civil suits against nursing homes. The Code of Federal Regulations, Section 42.488, requires the U.S. Department of Health and Human Services to contract with the states in conducting annual inspections of nursing homes. In Texas, state inspections are conducted by DHS and assess whether nursing homes are meeting federal standards of care, such as preventing residents from developing pressure sores (commonly known as bed sores), providing sanitary living conditions, and protecting residents from accidents. Annual inspections also record staffing levels in nursing homes.[8] Results of these inspections are compiled on a nationwide database that provides survey results of each facility.[9] According to TAHSA and THCA, survey instruments can sometimes present an unreliable description of the nursing home under inspection. The potential exists, TAHSA and THCA claim, to use unreliable surveys in lawsuits against nursing homes. Inspection surveys, according to nursing home associations, are considered a crucial element in persuading a judge or jury of nursing home negligence. Since DHS surveys have such an important role in suits against nursing homes, they increase the risk insurance companies must calculate when determining whether to issue nursing homes liability insurance. It is that risk of insurability, partially caused by the possibility that unreliable surveys will be allowed as evidence into a suit, that is influencing premium increases.

S.B. 190, passed in the 75th Legislature, introduced statutory language that does not bar the "admission into evidence in a civil action of a written finding, survey report, complaint investigation, incident investigation, or inspection report of the department [DHS] that is offered: (A) to establish warning or notice to an institution of a **relevant finding** [emphasis added]; or (B) under any rule or evidentiary predicate of the Texas Rules of Civil Evidence."



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This language replaced H.B. 2644, passed in the 74th Legislature. H.B. 2644 states that "a finding by the department [DHS] that an institution has violated a standard for participation in the state Medicaid program, or the assessment or payment of a monetary penalty under this section, is **not admissible** [emphasis added] as evidence in a civil action to prove that the institution has committed a violation."

The Texas Trial Lawyer's Association (TTLA) says that using the term "relevant finding" in the statute allows judges and courts discretion in evaluating whether surveys should or should not be included in the body of evidence presented in litigation. Judges, TTLA argues, can admit surveys when they are relevant to the issues and bar surveys from being introduced as evidence when they are not relevant to the issues presented.

Nursing home groups disagree with TTLA. According to nursing home representatives, S.B. 190 restricts a judge's capacity to rule on the admissibility or inadmissibility of surveys into evidence because it gives plaintiffs' attorneys authority to determine the admissibility of the evidence. Nursing home groups, therefore, want the language to be returned to the H.B. 2644 status or clarify that judges have the discretion on the relevance and/or admissibility of evidence into a suit.

Nursing home representatives further contend that surveys often fail to distinguish between injuries or problems that are a result of someone or something outside of the facility. For instance, a patient may have been injured or may have contracted bed sores outside of a nursing home facility. An inspector may note that a resident has bed sores in the facility but does not know the full details of where the resident actually contracted those bed sores.

TTLA and advocacy groups (such as American Association of Retired Persons [AARP] and Texas Watch) maintain that this is a point of fact that the nursing home can bring out in trial. If the nursing home did not act negligently in caring for a resident, then the facility should be able to prove this in a court of law. These groups contend that a nursing home facility should make note of any preexisting conditions when a resident is admitted and may even want to pursue notifying state investigators about the hospital or facility they suspect is responsible for the resident's condition.

Texas Watch, a resident's advocacy group, believes that "survey instruments are the best tool available to assess the conditions in Texas nursing homes and document the paths towards improving care." Texas Watch claims that "if the legislature keeps survey documents out of trials, there is no guarantee that the insurance industry will respond with reduced rates."

Nursing home groups counter this position by contending that although there is no guarantee that the insurance industry will respond with reduced rates, more accurate and reliable surveys could reduce the insurance risk associated with the current survey process.

The Senate Human Services Committee was given an interim charge of clarifying the admissibility of DHS survey documents in civil lawsuits against nursing homes. The committee is considering a potential bill revising the manner in which evidence is admitted in a legal proceeding. Committee staff is currently meeting with interested parties on resolving the survey dispute.

Nursing Home Medicaid Reimbursement Rates

THCA, TAHSA, TTLA, and AARP contend that Texas nursing homes have inadequate Medicaid reimbursement rates to address the problems cited in the DHS surveys. Inadequate funding, these groups claim, leaves nursing homes vulnerable to negligence lawsuits. As Table 1 illustrates, Texas has a reimbursement rate that ranks among the lowest of any state. In FY 1999, Texas had a Medicaid per diem reimbursement rate of $78.49,[10] placing Texas in the bottom twenty percent among state Medicaid reimbursement rates (see Table 1 on page 4).

Nursing homes and resident advocates claim that staffing levels in nursing homes are too low as a result of the reimbursement rate. This low reimbursement rate, they contend, leads to a potentially higher rate of mismanaged care and increases the potential risk for negligence within the nursing homes. Table 2 provides data compiled by the General Accounting Office (GAO) on the staffing levels in nursing homes per resident day by state, which places Texas in the bottom twenty percent. (see Table 2 on page 4).

TAHSA, THCA, and patient advocacy groups contend that quality of care diminishes relative to the level of staff available for resident care. Therefore, low reimbursement rates lead to a diminished quality of care. Diminished quality of care ultimately leads to higher actuarial risk and therefore to higher insurance premiums.

This topic was the subject of a 1998 Urban Institute study on the effect of reimbursement rates on nursing home quality of care. The Institute addressed whether states can reduce Medicaid nursing home payment rates without jeopardizing quality. The study found that "available research does not offer conclusive evidence about the level of reimbursement needed to provide adequate quality of care."[11] However, the study found that the approach that states take to reimburse nursing homes could affect quality of care.[12]

There are several approaches that states take in providing Medicaid reimbursements to nursing homes. The flat-rate approach provides reimbursements on a set rate for all residents, regardless of their condition. This approach might lead nursing homes to take fewer patients with greater care-intensive conditions. And if nursing homes are caring for a larger population of care-intensive residents, then they might be less likely to provide quality care since the reimbursements may be inadequate for their needs. An alternative form of reimbursement is to use the case mix approach. This approach takes into account the variance in resident conditions and adjusts reimbursement rates to meet the cost of care-intensive residents. One of the potential drawbacks to this approach is that facilities may inaccurately report resident conditions and may rehabilitate residents at a slower rate than they would on a flat-rate reimbursement rate.

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Table 1

Medicaid Per Diem Reimbursement Rates by States

State	Rate
Alaska	352.20
District of Columbia	185.06
New York	173.85
Hawaii	155.56
Pennsylvania	120.05
Washington	116.49
Massachusetts	116.00
Maine	115.77
New Hampshire	115.33
Ohio	112.49
Rhode Island	111.75
Delaware	111.70
Colorado	106.72
Minnesota	106.65
West Virginia	106.48
Vermont	105.12
Michigan	105.00
Nevada	104.61
Alabama	103.86
Florida	102.38
Idaho	102.29
Wisconsin	98.97
North Dakota	97.68
Iowa	95.00
New Mexico	94.53
Arizona	94.51
Wyoming	94.38
Montana	93.39
Kentucky	93.01
Indiana	92.20
Missouri	90.04
Oregon	89.05
South Carolina	87.01
Nebraska	86.06
Utah	85.53
Tennessee	85.37
North Carolina	84.92
Mississippi	84.54
Georgia	83.64
Illinois	81.44
Texas	**78.49**
Kansas	77.25
Virginia	75.08
California	68.45
Louisiana	67.48
Oklahoma	66.38
Arkansas	64.33
Connecticut	N/A
Maryland	N/A
New Jersey	N/A

Add-ons are not included in these figures

Table 2

Staffing Levels in U.S. Nursing Homes: Total Hours per Resident Day by State, 1998-1999

State	1998	1999
Alaska	4.92	4.74
Nevada	3.82	4.73
Idaho	4.05	4.28
Delaware	4.41	3.88
Hawaii	4.11	3.83
New Hampshire	3.73	3.83
Utah	3.46	3.83
Washington	3.74	3.73
Maine	3.88	3.69
South Carolina	3.67	3.65
Kentucky	3.59	3.60
Alabama	3.73	3.59
North Carolina	3.70	3.58
Pennsylvania	3.69	3.58
North Dakota	3.20	3.52
Ohio	3.41	3.52
Florida	3.59	3.49
Massachusetts	3.55	3.45
Maryland	3.34	3.42
California	3.52	3.41
Virginia	3.38	3.41
West Virginia	3.35	3.41
Montana	3.57	3.40
New Jersey	3.27	3.37
Vermont	3.33	3.34
Michigan	3.32	3.32
Mississippi	3.46	3.28
Arizona	3.71	3.25
Wyoming	3.27	3.24
Colorado	3.30	3.23
Arkansas	3.12	3.19
Connecticut	3.16	3.15
Louisiana	3.14	3.14
Rhode Island	3.03	3.11
Illinois	3.01	3.10
Missouri	3.00	3.09
Georgia	3.10	3.06
New York	3.06	3.06
Oregon	3.09	3.06
Tennessee	3.21	3.06
Nebraska	2.97	3.05
New Mexico	3.23	3.03
Texas	**3.11**	**3.01**
Wisconsin	3.13	2.99
Indiana	2.87	2.94
Minnesota	2.84	2.82
Iowa	2.69	2.74
Kansas	2.64	2.69
Oklahoma	2.61	2.46
District of Columbia	N/A	N/A

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The Urban Institute study suggests that "state choices in method of reimbursement are likely to affect quality of care. Patient care is particularly vulnerable to reimbursement-focused cost containment efforts such as flat rates, suggesting that states should separate out those elements for more generous treatment. Case mix reimbursement is becoming increasingly popular among states and may improve access for heavy care patients, but it seems to have little positive impact on quality of care."[13] According to the study, "a dilemma for policymakers is that a dollar's worth of increased Medicaid reimbursement will generate less than a dollar's worth of quality improvement. Higher rates may be diluted in ways – including administrative expenses, profits, and inefficiency – that do not improve resident outcomes."[14]

Nursing Home Lawsuits

In 1997, according to TDI, Texas nursing homes paid 86 claims worth $10.4 million.[15] Two years later 92 claims were filed costing nursing homes a total of $26.1 million. Nursing homes purchase liability insurance to protect themselves against economic judgments. State-regulated insurance companies do not insure nursing homes against punitive damages. Despite the fact that punitive damages are not covered by liability insurance, large settlements against nursing homes, according to some observers, have led to fewer insurance companies willing to provide liability coverage to nursing homes. Rather than risking litigation and large punitive damages, some observers say that nursing homes are more likely to settle for out of court damages that are paid by their insurer.[16]

Texas went through significant tort reform measures in 1995. Section 41.008, Civil Practice and Remedies Code, was amended in 1995 to limit the amount of exemplary damages awarded to a defendant. Section 41.008 (c) exempts the application of the damage caps from "a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally. Section 41.008 (c)(7) exempts the injury to a child, ***elderly individual*** [emphasis added], or disabled individual from exemplary damage caps.

Nursing home associations claim that the lack of a statutory limit or cap on the amount of punitive damages awarded a resident has increased the potential risk insurance companies use to assess whether to issue a liability policy, as well as the premium amount for that policy. According to the nursing home associations, there should be a statutory limit on the punitive damage cap to curb the rising cost of nursing home liability insurance.

TTLA disagrees with the nursing home associations. According to TTLA, a lack of punitive damage caps in lawsuits against nursing homes is not the cause of premium increases. The cause, TTLA claims, is the result of the negligent actions on the part of the nursing homes. But for the negligence, there would be no grounds for a judgment in favor of the resident. Therefore, nursing homes can reduce their premiums by avoiding actions that are negligent to their residents.

Public Nursing Home Rating System

Texas Watch urges policymakers to consider a state program that rates the quality of care provided by nursing homes. According to a Texas Watch position paper, "long-term liability carriers should develop experience ratings to protect good homes from undue rate hikes, yet hold homes with poor care histories accountable for improving care of their residents."

In an attempt to reduce nursing home liability premiums, TDI recently developed a system that rates a nursing home's risk of insurability. In February 2000, TDI included nonprofit nursing facilities in the Texas Medical Liability Underwriting Association –commonly referred to as the joint underwriting association (JUA) –to relieve some of the financial burden placed on nonprofit nursing homes.[17] The JUA is a state program that provides insurance for nursing homes unable to secure a liability insurance policy from a state-regulated company. During the 76th Legislative Interim, the Texas Senate Human Services Committee recommended adding for-profit nursing homes to the list of facilities eligible for the state JUA. This is the first time nursing homes have been included in the JUA since 1982.

TDI created a tier-rating system of nursing homes that considers a number of factors that determine risk of insurability. The following are included in TDI risk assessment:

- Past Claims Experience;
- Quality of Care Rating;
- Staff Ratios;
- Tenure and Credentials of Key Personnel;
- Risk Management, Loss Control, and General Safety; and
- Ombudsman Program Evaluation.

Based on the criteria listed, each nursing home is given a total score of insurability. If a nursing home chooses to participate in the JUA program, its score determines the premium level. TDI says that this approach provides nursing homes with fewer risk factors the ability to secure a premium rate lower than those nursing homes with higher risk factors. Just as automobile insurance allows drivers with safer driving records the ability to capture lower premiums for auto insurance, nursing homes with lower risk factors should also have reduced liability premiums compared to nursing homes with higher risk factors.

The TDI rating system, however, applies only to nursing homes applying for admission into the JUA. TAHSA forecasts a low percentage of nonprofits applying for admission since it is an

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insurance program of last resort. And if for-profit nursing homes are admitted to the fund, then THCA also forecasts a low percentage of its members will apply for admission into the JUA.

For Texas Watch, the TDI rating system is an important start in providing a public rating system of the nursing home industry. But the association would like to extend this type of rating system to all nursing homes operating in the state.

Comparing Texas with other States

The Senate Research Center (SRC) conducted a state-by-state survey on liability insurance premiums. The survey asked state insurance personnel, legislative staff, long-term care agency personnel, and nursing home interest groups to assess the current nursing home liability insurance problems in their state. The table below describes the status of liability insurance premiums in states responding to the SRC survey. Florida has the highest rates of all states participating in our survey (See "Florida Liability Rates Outpacing the Rest of the Country" below).

Florida Liability Rates Outpacing the Rest of the Country

Florida is the only state with nursing home liability insurance premiums increasing at a higher rate than the premiums in Texas. Based on data from the Florida Association of Homes and Services for the Aging (FAHSA), insurance premiums in Florida have increased an average of 410 percent over the past two years. Some members of FAHSA are reporting increases of 1000 percent or higher. Premiums in Florida have increased an average of 37 percent per year since 1988. The liability insurance market is extremely volatile and the number of carriers is dropping. Florida data indicate that liability insurance now costs somewhere between $6,000 and $8,000 per year per bed.

Why are some states experiencing rate increases?

There are several explanations why Florida and Texas are the states with the greatest increases. In a study of Florida nursing home premiums, AON Actuarial Consulting Firm claims that the main factor separating Texas and Florida from other states is their "very strong patient's rights statutes."[18] The Florida Patient's Bill of Rights (Statute 400.002) guarantees the patient's right to be informed and provided adequate care and treated with dignity, among many other rights. The violation remedies provided under this statute include actual damages, punitive damages, and attorney's fees.

In Texas, the Resident's Bill of Rights (Chapter 247 of the Texas Health and Safety Code) itemizes 14 rights including "the right to . . . a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident." While

State by State Comparison of Nursing Home Liability Insurance Premiums

State	Issue	Explanation
Florida	Yes	Liability insurance costs somewhere between $6,000 and $8,000 a year per bed.
California	No	California's premium rates are below the average nationwide market rate
New York	Yes	Premiums increased up to 150 percent in some nursing homes. However, average premium rates in New York are approximately $150 per bed.
Pennsylvania	Yes	Premiums for nursing homes have doubled or tripled in the past year.
Ohio	No	No evidence of a liability insurance issue in Ohio.
Iowa	Yes	Iowa nursing homes are reporting increases of up to 500 percent.
Indiana	Yes	Indiana nursing homes are reporting increases from 25 percent to as high as 1,000 percent.
Missouri	Yes	Missouri reported increases in liability insurance but did not report the amount of the increases.
Washington	Yes	Washington reported 30 to 300 percent increases in premiums for nursing homes.
Michigan	No	Michigan could not identify rate increases for nursing home liability insurance premiums.
Arizona	No	No evidence of a liability insurance issue in Arizona.
Kentucky	Yes	Kentucky liability insurance is increasing approximately 300 percent per year.
Arkansas	No	Arkansas has not identified nursing home liability insurance as an issue.

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the Texas statute does not specifically provide for punitive damages as a remedy for violations, cases involving injury to the elderly were specifically exempt from the 1995 Texas tort reform punitive damage cap. This exemption, some argue, has contributed to an increase in the number of claims made against nursing homes.

Despite the correlation in Florida and Texas, not all states with patient rights statutes have experienced the same trends in the cost of liability claims. California, for example, has an elderly abuse protection act that provides patient's rights to residents of nursing homes. Yet, California's premiums of $770 per bed are below the average nationwide premium of $809.

An alternative explanation is that states with larger nursing home settlements will experience higher premium increases. Regardless of a claim's legitimacy, the potential for large judgments against nursing homes remains an important variable in determining the risk of insuring a nursing home. In fact, according to the AON study, Texas and Florida have the most severe claim rates of all states. The average size of a 1999 claim in Florida was approximately $279,000, while the average 1999 claim in Texas was approximately $272,000. Florida was projected to be 250 percent higher in its claim settlements than the rest of the country.[19] California settlements averaged $116,000, which remained slightly above the national settlement average of $112,000. Regardless of their validity, it appears that larger settlements are one factor driving insurance premiums. It is possible that premium increases in other states such as Iowa, Kentucky, Washington, and Indiana are based on increasing judgments against nursing homes operating in those states. Data from other states on the judgment sizes in nursing home cases are not currently available.

Because insurance premiums are a product of the risk associated with the nursing home industry, perhaps the explanation is actually a combination of several factors. High turnover rates among primary care personnel in nursing homes and low levels of Medicaid reimbursement rates have become highly publicized issues throughout the United States. The potential for judgments in favor of a resident's negligence claim, along with state survey reports listing the problems associated with nursing homes, add to the perception that nursing homes are risky long-term care environments. Judgments against nursing homes, regardless of their validity, remain important components in understanding the overall risk associated with insuring nursing homes in liability claims.

—by David Thomason, SRC Health Policy Specialist

End Notes

[1] Texas Department on Aging, "Demographic Profile of the Elderly in Texas," March 2000, 11.

[2] *Ibid,* 7.

[3] *Ibid,* 12.

[4] *Ibid*, 14, 15. Office of the State Comptroller, "Fiscal Notes," December 2000, 10.

[5] Based on TDI data and interviews with TDI staff members.

[6] *Ibid.*

[7] Constance Parten, "And Then There Were Two…," *Insurance Journal: The Property and Casualty Magazine of Texas* (November 13, 2000), 1.

[8] United States House of Representatives Committee on Government Reform Minority Staff, "Nursing Home Conditions in Texas: Many Homes Fail to Meet Federal Standards for Adequate Care," prepared for Representative Ciro D. Rodriguez, (October 31, 2000), 4.

[9] In the Minority Staff of the Committee on Government Reform report, the staff reported that "over 80 percent of the nursing homes in Texas violated federal health and safety standards during recent state inspections. Moreover, over 50 percent of the nursing homes in Texas had violations that caused actual harm to residents or placed them at risk of death or serious injury." *Ibid, 1.*

[10] One caveat is important when interpreting the reimbursement rates. Although Texas is 42nd with its nursing home Medicaid reimbursement rates of $78.49, the state has Medicaid add-ons that increase its overall nursing home reimbursement rate. Some argue that the add-ons vary considerably among states so that it is unfair to make comparisons among states. However, Jim Swan, Associate Professor of Health Care Management at Wichita State University and Medicaid reimbursement expert, disagrees with this claim. Swan recently completed a study using all add-ons to the flat Medicaid reimbursement rate and found that state rankings do not change in any significant amounts when compared to the initial ranks on the flat reimbursement rates. What Swan's study tells us, then, is that rankings by flat Medicaid reimbursement rates are good indicators about state reimbursement rates in comparison to other states.

[11] Joshua Wiener and David G. Stevenson, "Repeal of the Boren Amendment: Implications for Quality of Care in Nursing Homes," *The Urban Institute* (December 1988), 6.

[12] *Ibid*, 6.

[13] *Ibid, 5*.

[14] *Ibid, 6*.

[15] Amy Schatz, "Repay us, Nursing Homes Ask," *Austin American-Statesman*, G7 (February 5, 2000).

[16] *Ibid*, G7.

[17] JUA is defined, pursuant to Section 4, Art. 21.49(3b), Insurance Code, "as a voluntary unincorporated association of admitted insurers authorized to do business in this state that has been authorized by its member insurers to act on behalf of those insurers in joint underwriting or in the issuance of syndicate policies of insurance on a several but not joint basis."

[18] AON, 14.

[19] AON, 18.

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